

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES C. STOCKMAN	:	CIVIL ACTION
	:	
v.	:	
	:	
JO ANNE B. BARNHART,	:	NO. 02-2162
Commissioner of Social	:	
Security	:	

MEMORANDUM

Padova, J.

August , 2003

I. BACKGROUND

Plaintiff James C. Stockman filed this action pursuant to 42 U.S.C.A. § 405(g), seeking judicial review of the final decision of Defendant Commissioner of Social Security Jo Anne B. Barnhart ("Commissioner"), denying his claim for disabled adult child benefits ("DAC") and supplemental security income benefits ("SSI") pursuant to Title II and Title XVI of the Social Security Act, 42 U.S.C.A. §§ 401-433 and 1381-1383, respectively. Both parties filed motions for summary judgment. Pursuant to Local Rule 72.1(d)(1)(C), the Court referred the case to Magistrate Judge Peter B. Scuderi for a Report and Recommendation. The Magistrate Judge has recommended that Plaintiff's Motion for Summary Judgment be denied and the Commissioner's Motion for Summary Judgment be granted. The Plaintiff filed timely objections. For the reasons that follow, the Court overrules Plaintiff's objections and adopts the Magistrate Judge's Report and Recommendation. Defendant's Motion for Summary Judgment is granted and Plaintiff's Motion for Summary Judgment is denied.

II. STANDARD OF REVIEW

Under the Social Security Act, a claimant is disabled if he is unable to engage in "any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to . . . last for a continuous period of not less than twelve (12) months." 42 U.S.C. §423(d)(1)(A); 20 C.F.R. §404.1505. Under the medical-vocational regulations, as promulgated by the Commissioner, the Commissioner uses a five-step sequential evaluation to evaluate disability claims.¹ The burden to prove the

¹The five steps are:

1. If you are working and the work you are doing is substantial gainful activity, we will find that you are not disabled regardless of your medical condition or your age, education, and work experience.
2. You must have a severe impairment. If you do not have any impairment or combination of impairments which significantly limits your physical or mental ability to do basic work activities, we will find that you do not have a severe impairment and are, therefore, not disabled. We will not consider your age, education, and work experience. However, it is possible for you to have a period of disability for a time in the past even though you do not now have a severe impairment.
3. If you have an impairment(s) which meets the duration requirement and is listed in Appendix 1 or is equal to a listed impairment(s), we will find you disabled without considering your age, education, and work experience.
4. Your impairment(s) must prevent you from doing past relevant work. If we cannot make a decision based on your current work activity or on medical facts alone, and you have a severe impairment(s), we then review your residual functional capacity and the physical and mental demands of the work you have done in the past. If you can still do this kind of work, we will find that you are not disabled.
5. Your impairment(s) must prevent you from doing any other work. (1) If you cannot do any work you have done in the past because you have a severe impairment(s), we

existence of a disability rests initially upon the claimant. 42 U.S.C. §423(d)(5). To satisfy this burden, the claimant must show an inability to return to his former work. Once the claimant makes this showing, the burden of proof then shifts to the Commissioner to show that the claimant, given his age, education and work experience, has the ability to perform specific jobs that exist in the economy. Rossi v. Califano, 602 F.2d 55, 57 (3d Cir. 1979).

There is an additional process for evaluating mental impairments:

The Commissioner has supplemented this sequential process for evaluating a claimant's eligibility for benefits with additional regulations dealing specifically with mental impairments. 20 C.F.R. § 404.1520a. These procedures require the hearing officer (and ALJ) to record the pertinent signs, symptoms, findings, functional limitations and effects of treatment contained in the case record, in order to determine if a mental impairment exists. 20 C.F.R. § 404.1520a(b)(1). If an impairment is found, the examiner must analyze whether certain medical findings relevant to a claimant's ability to work are present or absent. § 404.1520a(b)(2). The examiner must then rate the degree of functional loss resulting from the impairment in certain areas deemed essential for work. If the mental impairment is considered "severe", the examiner must then determine if it meets a

will consider your residual functional capacity and your age, education, and past work experience to see if you can do other work. If you cannot, we will find you disabled. (2) If you have only a marginal education, and long work experience (i.e., 35 years or more) where you only did arduous unskilled physical labor, and you can no longer do this kind of work, we use a different rule. 20 C.F.R. §§ 404.1520(b)-(f).

listed mental disorder. § 404.1520a(c)(2). If the impairment is severe, but does not reach the level of a listed disorder, then the examiner must conduct a residual functional capacity assessment. § 404.1520a(c)(3).

Plummer v. Apfel, 186 F.3d 422, 428-29 (3d Cir. 1999) (footnote omitted).

Judicial review of the Commissioner's final decision is limited, and this Court is bound by the factual findings of the Commissioner if they are supported by substantial evidence and decided according to correct legal standards. Allen v. Brown, 881 F.2d 37, 39 (3d Cir. 1989); Coria v. Heckler, 750 F.2d 245, 247 (3d Cir. 1984). "Substantial evidence" is deemed to be such relevant evidence as a reasonable mind might accept as adequate to support a decision. Richardson v. Perales, 402 U.S. 389, 407 (1971); Cotter v. Harris, 642 F.2d 700, 704 (3d Cir. 1981). Substantial evidence is more than a mere scintilla, but may be somewhat less than a preponderance. Dobrowolsky v. Califano, 606 F.2d 403, 406 (3d Cir. 1979).

Despite the deference to administrative decisions implied by this standard, this Court retains the responsibility to scrutinize the entire record and to reverse or remand if the Commissioner's decision is not supported by substantial evidence. Smith v. Califano, 637 F.2d 968, 970 (3d Cir. 1981). Substantial evidence can only be considered as supporting evidence in relationship to all other evidence in the record. Kent v. Schweiker, 701 F.2d 110,

114 (3d Cir. 1983).

III. DISCUSSION

James C. Stockman applied for Supplemental Security Income on August 17, 1998, alleging a disability that began on June 1, 1998. At the time of his application he was eighteen years old. On January 7, 1999, his father filed an application for Disabled Adult Child Benefits on his behalf, alleging a disability that began on June 1, 1998. (Tr. at 18.) Plaintiff had been diagnosed with learning disabilities as a child and had previously received Child's Disability Benefits which ended when he turned 18, on October 14, 1997. (Id.) Plaintiff graduated from high school in June 1997, taking his academic classes in learning support and other classes in regular education. (Tr. at 231-32.) His only employment experience was a job at Drug Emporium which he held for approximately one month in November 1997. (Tr. at 51.)

Plaintiff's applications for SSI and DAC benefits were denied both initially and on reconsideration. (Tr. at 18.) A hearing was held before Administrative Law Judge ("ALJ") Hazel C. Strauss on March 2 and April 16, 2000. (Id.) Plaintiff did not appear at the hearing. (Id.) His mother (Katherine Stockman) appeared at the hearing and testified that she had not asked him to attend. (Id.) The ALJ suggested calling Plaintiff to take his testimony over the phone but Mrs. Stockman insisted that he would not talk on the phone to anyone he does not know. (Tr. at 81.) She stated that he

did not attend the hearing because he will not leave the house. (Tr. at 82.) Mrs. Stockman testified that Plaintiff is disabled because he has mental depression and agoraphobia. (Tr. at 56.) She stated that he is not receiving any treatment for these conditions because he "will not go out of the house." (Id.)

On July 26, 2000, the ALJ issued a decision denying Plaintiff's applications for benefits. (Tr. at 18-32.) The ALJ found that Plaintiff "has borderline intellectual functioning, which is a severe impairment" and no physical impairment. (Tr. at 31.) The ALJ further found that Plaintiff "does not have any impairment or combination of impairments which meets or medically equals an impairment listed in Appendix 1, Subpart P, Regulations No. 4," that he "has the residual functional capacity to perform simple, routine repetitive work" and that a "significant number of jobs exist in the national economy that [Plaintiff] can perform, considering his age, education, lack of past relevant work and residual functional capacity. These jobs were enumerated by the vocational expert." (Tr. at 31-32.) The ALJ concluded that Plaintiff was not disabled. (Tr. at 32.) The Appeals Council denied Plaintiff's request for review; therefore, the ALJ's decision dated July 26, 2000, is the final decision of the Commissioner. See 20 C.F.R. §§ 404.1584(d), 416.984(d). Plaintiff then filed this action.

Plaintiff, both in his motion for summary judgment and in his

objections to the Magistrate Judge's Report and Recommendation, argues that the ALJ's determination that Mrs. Stockman's testimony was not credible was not based on substantial evidence and that the ALJ improperly discounted his evaluation by Mr. Rosenfield, a psychologist. He further objects to the Magistrate Judge's determination that this matter should not be remanded for consideration of psychological treatment notes from Ron Kaiser, Ph.D.

Examining the ALJ's decision, the Record, and Plaintiff's specific arguments, the Court is satisfied that the Commissioner's denial of Plaintiff's claims was supported by substantial evidence.

A. Mrs. Stockman's Credibility

The ALJ found that Mrs. Stockman's testimony was not credible: "I find, as previously stated, that this case turns on the issue of credibility, and I find claimant's mother's testimony not credible. I find that because of possible secondary gain, she presented her son in a light that is not in accordance with the true circumstances." (Tr. at 24.) "Credibility determinations are the province of the ALJ, and only should be disturbed on review if not supported by substantial evidence." Pysher v. Apfel, Civ. A. No. 00-1309, 2001 WL 793305, at *3 (E.D. Pa. Jul. 11, 2001) (citing Van Horn v. Schweiker, 717 F.2d 871, 873 (3d Cir. 1983)).

Mrs. Stockman's testimony regarding Plaintiff's mental state, his ability to perform activities of daily living, and ability to

travel and work outside of his parent's home is central to Plaintiff's application for benefits. She testified at the March 2, 2000 hearing that Plaintiff lives with his parents. (Tr. at 49.) He does not have a driver's license and did not have any further vocational training or education after completing high school. (Tr. at 49-50.) He worked at Drug Emporium for approximately one month in 1997, and that is his only work experience. (Tr. at 51.) Mrs. Stockman told the ALJ that she got Plaintiff the job at Drug Emporium through one of her friends who is employed at another Drug Emporium. (Id.) She took him to the store to apply for the job and he completed the application for the job himself. (Tr. at 53.) She claimed that he cried every day when he got home from work and said that he did not know what he was doing and that the employees were telling him that he was making mistakes when he was stocking the shelves. (Tr. at 53-54.) She called the store to say that he had quit. (Tr. at 53.)

Mrs. Stockman further testified that Plaintiff is disabled because he has mental depression and agoraphobia. (Tr. at 56.) She stated that he is not receiving any treatment for these conditions because he "will not go out of the house." (Id.) She had him evaluated at Psych Resources. (Id.) His intake report was prepared on October 15, 1998 by a social worker who classified him in Axis I with a major depressive disorder and in Axis II with a learning disorder. (Tr. at 401.) He was evaluated by Psych

Resources on November 23, 1998 by Dr. Lawrence Hersey, a clinical psychologist, and diagnosed in Axis I with major depressive disorder and, in Axis II, with a learning disorder. (Tr. at 399.) He was prescribed Paxil. (Tr. at 400.) Mrs. Stockman testified that Plaintiff refused treatment at Psych Resources because they wanted to give him drugs. (Tr. at 58.) She stated that she later brought him back to Psych Resources where a Dr. Iskaderian told her that he had major depression and agoraphobia. (Tr. at 59-60.) He prescribed Paxil and Ritalin. (Tr. at 60.) Plaintiff refused to take the Ritalin and his mother put it in his juice without his knowledge. (Id.) There is no evaluation by Dr. Iskaderian in the administrative record.

Mrs. Stockman also testified that Plaintiff sleeps all day, getting up between 5 and 7 p.m. (Tr. at 61.) She said that he eats dinner, watches television, goes back to sleep from 9 p.m. until 2, at which time he gets up and plays SEGA or Playstation. (Id.) He sometimes reads the sports page but does not attend any sporting events. (Tr. at 62.) She further stated that "he will not go anywhere. He's just afraid of the outside world." (Tr. at 64.) He refuses psychiatric treatment and says that there is nothing the matter with him. (Tr. at 65.) People do come to visit him at his parents' house. Sometimes he will interact with them and sometimes he goes into a depression where he sits and stares at the walls and his eyes get shiny. (Tr. at 66.) He will not do any

chores around the house. (Id.)

Mrs. Stockman also testified that Plaintiff will only leave the house in limited circumstances. He will leave to go to his family doctor across the street, to get a haircut every couple of months, and to the orthodontist once a month. On those occasions, his parents bring him and take him home. (Tr. at 67-69.) When Plaintiff was in high school he took SEPTA to get to and from school. (Tr. at 71-72.) He watches hockey, Who Wants to be a Millionaire and the Drew Carey Show on television. (Tr. at 75-76.) He also sits in his bedroom and stares at the walls. (Tr. at 76.) His parents have to remind him to shower, brush his teeth and shave. (Tr. at 77.) Mrs. Stockman also stated that Plaintiff is afraid of the computer because it crashes often. (Tr. at 84.) She subsequently testified that he sometimes uses the computer to participate in chat rooms. (Id.) She initially said that he does not participate in chat rooms much, but on further questioning stated that he does so three days a week for approximately half an hour at a time. (Tr. at 84-85.) She also stated that he does not go rollerblading. (Tr. at 85.) Plaintiff did go rollerblading in high school, but he never did so with friends. (Tr. at 85-86.)

Mrs. Stockman further testified to the following regarding Plaintiff's mental state:

He cries and says his brain is not working. He says he cannot concentrate. He says his body is not connected to him. He does not know who he is. He does not know how

he graduated from high school. He feels like he did not learn anything in school or understand anything. James feels like the high school he went to just gave him the diploma. He says he did not deserve it. He says he does not know what he's doing. He says when he looks in the mirror, he does not look like himself. Does not want to go outside, he has fear in him. He feels comfortable at home just playing music CDs or listening to the radio or watching television.

(Tr. at 74-75.) Mrs. Stockman also testified that when Plaintiff was in school he was traumatized by other kids making fun of him.

(Tr. at 72.) Once, when he was in high school, other kids squirted mustard all over his jacket. (Id.) Mrs. Stockman also testified that Plaintiff was a victim of other instances of bullying:

A. When I mentioned to you about the trauma that he's had before in high school, he did not know who this child was when he was in high school, but I had gone up to school to see if I could find out who it was, until this day I could not. Someone beat him up after he got off the bus right down the street from me, off the CEPTA [sic] bus. They beat him up, blackened his face and until this day, he said he did not know who the kid was. And then, when we first moved in the neighborhood, a kid in the neighborhood had bit him in the testicle. And another child from the neighborhood, when we first moved in the neighborhood, tried to set him on fire.

Q. How, was, was he beaten up just that one time that you, just that one incident that you're talking about?

A. When he got off the bus, yes.

Q. And just the one time, is that right?

A. Right. So, whether all this trauma has anything to do with his problem, I do not

know.

Q. Well, so, how old was he when someone tried to set him on fire?

A. He was five years old when we first moved in the neighborhood and I guess he was about, well, seven, eight, nine years old.

Q. So, was he injured in that -

A. They were, the kid was - I had called the cops twice, striking matches and they were trying to set his clothes on fire. And then, this -

Q. Okay. So, let me understand.

A. Um-hum.

Q. There was a child who was trying to set his clothes on fire.

A. Correct.

Q. Was there a fire?

A. No.

Q. Did that fire incident that you're talking about, trying to set him on fire with the matches occur on, on more than just the one time or just the one time?

A. Quite a few occasions where I had to call the police?

Q. Well, how did that come about? Could you just describe -

A. I called -

Q. - such circumstance -

A. - the police and I -

Q. Well, just describe how you came upon the situation. How did -

A. He was telling me that someone's trying to set him on fire. So, I went to the parents and told them and the parents looked like they didn't care or the father looked like he was drunk and the mother didn't look like she was stable. But, that's not my problem. I just wanted them to tell their child, you know, to keep away from my son and not to try to set him on fire, otherwise I'm going to prosecute. So, then, another time, this, the same child was still trying to, was striking the matches again and my son came home and told me, he's still trying to set me on fire. So, I called the police.

Q. And what happened?

A. Police came, a woman cop had come and said, went up to the kid's house and told the child if you continue, his mother's going to prosecute and you're going to go to jail. So, then after that, he stopped.

Q. Did you, were you present to observe any of these occasions at all or is this just what your son was telling you?

A. No, I was not present, but I believed him because I didn't feel like he was telling me a lie.

(Tr. at 86-88.)

The ALJ found that Mrs. Stockman's testimony was not supported by any records and was contradicted by statements made by Plaintiff to the psychologists who evaluated him. Two psychologists evaluated Plaintiff in his home at his mother's request. (Tr. at 79.) Stephen Rosenfield, M.A. examined Stockman on March 23, 1999. (Tr. at 405.) Plaintiff described his typical day to Rosenfield as follows:

A typical day on his part, according to him,

involves his getting up around 12 o'clock or later in the afternoon, where upon he dresses himself, and eats, then he stated "sometimes I go out roller-blading with a few friends, and sometimes I play on the computer - I go into the chat room and talk to people there." He stated that his appetite is "pretty good," but his mother commented that he sometimes sleeps through breakfast and lunch, and just eats diner.

He does perform some activities of daily living around the house, such as, using the vacuum cleaner and taking out the trash. For the most part he watches T.V., and apparently he has a T.V. in his room that he turns on until he falls asleep, which appears to make falling asleep easier for him at this point.

(Tr. at 406.) Steven B. Glazier, M.A. examined Plaintiff on July 14, 1999. Glazier reported his observation of Plaintiff as follows:

James seemed to enjoy the one-to-one attention he received from the examiner and he warmed up as the evaluation proceeded. He was much more talkative and friendly when he was with this examiner alone. By the end of the evaluation, James was bringing up topics of interest for discussion. He was calm and cooperative with the testing and persevered without undo frustration. He was motivated to do well and he appeared to try his best.

James was oriented to person, place, and time, and there were no indications of a psychotic or major mood disorder. His thought processes were somewhat concrete, but basically logical and goal directed. His speech was relevant and coherent. He denied depression or any prolonged periods of sadness. He denied any suicidal ideation. His judgement appeared fair, and behavioral controls were intact.

(Tr. at 412.)

A psychiatric Medical Expert identified inconsistencies between the testimony given by Mrs. Stockman and the information given by Plaintiff to the evaluating psychologists:

There's no reason for me to doubt what the mother says, but yet, he says things that are completely different. His mother says he sleeps past noon, he says he gets up. He says he has friends, his mother says he doesn't have friends. He says he vacuums, cleans and takes out the trash, his mother says he doesn't. He says he surfs the net, his mother's not sure. He says he plays street hockey, his mother says he doesn't and just went to a roller rink many years ago when he was in high school. He, he says he rollerblades, his mother says this is high school.

(Tr. at 92-93.)

After hearing from the Medical Expert, the ALJ arranged for a supplemental hearing with Plaintiff present, in order to resolve differences in the file between what Plaintiff and his mother say about his condition. (Tr. at 91.) The hearing recommenced on April 13, 2000. (Tr. at 103.) Plaintiff participated by phone from his home because his mother contended that he would not appear in person. (Tr. at 105.) Plaintiff's testimony concerning his prior work experience, mental state, and ability to leave the house by himself is quite different from that of his mother.

Plaintiff testified that he is studying for his driver's license test. (Tr. at 109.) He also testified that he worked at Drug Emporium, sweeping, cleaning the floor, dusting and stocking the shelves. (Tr. at 111.) He found the work boring and stopped

working there because he didn't like the work. (Id.) He walked to work at the Drug Emporium, it took him about 15 minutes, and sometimes his dad took him. (Tr. at 112-13.) When he worked at Drug Emporium he was sometimes told that he was doing a good job. (Tr. at 113.) He also testified that he roller skates to his grandmother's house which is a mile away. (Tr. at 113-14.) He visits her every two weeks or so, and sometimes goes over by himself to take things for his parents. (Tr. at 114.) He also watches TV and sometimes plays games outside. (Tr. at 115.) He testified that he has friends around the neighborhood with whom he hangs out on the corner. (Tr. at 115-16.) He had seen them two weeks prior to the telephone hearing. (Tr. at 126.) He played hockey and basketball in high school and has played hockey a few times since graduating. (Tr. at 116.) He also surfs the net and goes into hockey chat rooms. (Tr. at 117.) He also testified that he helps with household chores by dusting, cleaning the windows, taking out the trash, and vacuuming. (Tr. at 118.) He also goes to the Acme by himself. The Acme is approximately 8-10 blocks away and he walks there. (Id.) He also collects baseball cards. (Tr. at 120.) He has gone to a couple of baseball card trade shows at the Philadelphia Convention Center with his father. (Tr. at 120-21.) He also testified that his parents remind him about washing, bathing and brushing his teeth once or twice a week. (Tr. at 127.)

Plaintiff also testified about his experience in school. He

stated that other kids did not pick on him too much while he was in school. (Tr. at 128-29.) He also reported that he had trouble concentrating on reading when he was in high school but it has gotten a little better since he left school. (Tr. at 129.)

Plaintiff denied telling his mother that he didn't know who he is or that he didn't deserve his high school diploma, though he did say that he feels that he didn't work that hard for his diploma. (Tr. at 129-30.) He testified that he feels comfortable at home with his music, he goes to bed at 1 or 2 and gets up at 1 or 2 in the afternoon. (Tr. at 130.) He said that sometimes his mother finds him laying on the couch by himself in the dark. (Tr. at 131.) He stated that he doesn't play hockey anymore. (Id.)

The ALJ also considered Plaintiff's records from the School District of Philadelphia, which do not support his mother's testimony regarding childhood bullying. The records dating from shortly before his graduation from school show that he was "successful in Sp. Ed. and regular classes. He gets along well with peers and teachers yet tends to be quiet at times. He is undecided about any plans for a vocation or career." (Tr. at 229.) Earlier school district records show that he started special education classes after second grade because of a learning disability. (Tr. at 246.) He remained in learning support classes at least part time through high school. (Tr. at 319.) These school records reflect that Plaintiff was an excellent student and

always prepared (Tr. at 298); that he was motivated, responsible and got along well with class members (Tr. at 299); that he was "a lovely person and a super student" (Tr. at 24, 299); that he "seems well liked by his classmates" (Tr. at 239); that he was "an excellent class citizen and well liked by his peers" (Tr. at 277); and that he liked to work with people (Tr. at 25, 283).

In making her decision that Mrs. Stockman's testimony was not credible, the ALJ noted that Mrs. Stockman did not tell Plaintiff about the hearing and did not give him the opportunity to attend. (Tr. at 18.) When the ALJ suggested taking Stockman's testimony over the phone, his mother testified that it would not work because he won't talk to strangers on the phone. (Tr. at 18, 81.) The ALJ relied on the contradictions between Plaintiff's testimony and his mother's testimony regarding whether he leaves the house, how he felt about his job at Drug Emporium and why he left that job, what he does at home, and his mental state. (Tr. at 24-25, 61-86, 111-139.) The ALJ also noted that the mother's testimony that he was tormented by fellow students and neighborhood children is not supported by his school records. The Court finds that the ALJ's credibility determination is supported by substantial evidence and Plaintiff's objection to the Magistrate Judge's recommendation on this point is overruled.

B. Mr. Rosenfield's Evaluation of Plaintiff

The ALJ discounted Mr. Rosenfield's psychological evaluation of Stockman, which resulted in a diagnosis of post-traumatic stress disorder and adjustment disorder with depressed mood, because it relied on the history provided by his mother. (Tr. at 27.) "The ALJ must reconcile factual differences in evidence, determine witness credibility, and weigh the evidence presented." Moody v. Barnhart, No.CIV.A. 02-8972, 2003 WL 21640621, at *3 (E.D. Pa. Jul. 11, 2003) (citing Richardson v. Perales, 402 U.S. 389, 401 (1971)). Where there is a conflict in the evidence, "the ALJ may choose whom to credit but 'cannot reject evidence for no reason or for the wrong reason.'" Plummer, 186 F.3d at 429 (quoting Mason v. Shalala, 994 F.2d 1058, 1066 (3d Cir. 1993)). When the ALJ discounts evidence in the record, she must give a reason for doing so. Id. In considering physician reports, the ALJ should accord great weight to the reports of treating physicians, especially "'when their opinions reflect expert judgment based on a continuing observation of the patient's condition over a prolonged period of time.'" Id. (quoting Rocco v. Heckler, 826 F.2d 1348, 1350 (3d Cir. 1987)). Moreover, "[a]n ALJ may reject a treating physician's opinion outright only on the basis of contradictory medical evidence, but may afford a treating physician's opinion more or less weight depending upon the extent to which supporting explanations are provided. Id. (citing Newhouse v. Heckler, 753

F.2d 283, 286 (3d Cir. 1985)). Mr. Rosenfield did not treat Plaintiff, he only evaluated him. Therefore, his evaluation is not entitled to the additional weight given to the report of a treating physician.

The ALJ stated that she discounted the diagnosis made by Mr. Rosenfield because it was "colored by and primarily based on the history reported by claimant's mother, which likely is inaccurate and exaggerated, as there are not records to substantiate the claims" and because Plaintiff's description of his daily activities contradicted his mother's description. (Tr. at 27, 407.) The ALJ also stated that:

Because of the discrepancies in the history and other information provided by claimant's mother to Mr. Rosenfield, and also claimant's testimony that there is nothing wrong with him, I do not rely on Mr. Rosenfield's conclusions as to the diagnoses of Post Traumatic Stress Disorder and adjustment disorder or on his psychiatric activities assessment. Thus I afford such conclusions and the psychiatric activities assessment very little probative weight.

(Tr. at 28.) Indeed, the only evidence that Plaintiff experienced traumatic events which is mentioned in Mr. Rosenfield's evaluation was provided by Mrs. Stockman:

His mother noted that from the time he was 5 years old until he graduated high school, that "on one occasion he was bitten by another boy in the testicles, he was frequently beat up coming home from school when riding SEPTA, and when he would go outside other kids would blame him for different things he did not do. On at least several different occasions, it

was alleged by his mother that kids in the neighborhood would try to set him on fire. He apparently was frequently called names by kids in the neighborhood as well.

(Tr. at 407.) Mr. Rosenfield concluded that Plaintiff's problems stemmed from these alleged traumatic events: "[o]ne of the biggest problems he seems to face at this point is his elevated anxiety level, possibly related to his probable posttraumatic stress disorder, related to the culmination of all the apparent harassments that he has undergone from a very early age until he left school." (Id.) The Court finds that the ALJ gave a reason for her decision to discount Mr. Rosenfield's evaluation of Plaintiff and that the ALJ's reason is supported by substantial evidence. Plaintiff's objection to the Magistrate Judge's recommendation on this point is, therefore, overruled.

C. Ron Kaiser, Ph.D.'s Treatment Notes

Plaintiff objects to the Magistrate Judge's denial of his request that this case be remanded to the Commissioner for consideration of new evidence, namely the treatment notes of Ron Kaiser, Ph.D., which cover the period from December 18, 2001 through May 17, 2002, substantially after the ALJ's decision. Sentence 6 of 42 U.S.C. §405(g) governs when the District Court may remand to the Commissioner for the consideration of new evidence:

If the claimant proffers evidence in the district court that was not previously presented to the ALJ, then the district court may remand to the Commissioner but that disposition is governed by Sentence Six of §

405(g). That sentence provides, The court may, on motion of the Commissioner of Social Security made for good cause shown before the Commissioner files the Commissioner's answer, remand the case to the Commissioner of Social Security for further action by the Commissioner of Social Security, and it may at any time order additional evidence to be taken before the Commissioner of Social Security, but only upon a showing that there is new evidence which is material and that there is good cause for the failure to incorporate such evidence into the record in a prior proceeding; and the Commissioner of Social Security shall, after the case is remanded, and after hearing such additional evidence if so ordered, modify or affirm the Commissioner's findings of fact or the Commissioner's decision, or both, and shall file with the court any such additional and modified findings of fact and decision, and a transcript of the additional record and testimony upon which the Commissioner's action in modifying or affirming was based.

Matthews v. Apfel, 239 F.3d 589, 592 (3d Cir. 2001). The United States Court of Appeals for the Third Circuit ("Third Circuit") has found that, to justify a remand based upon evidence brought first to the District Court, the claimant must establish that the evidence is new and material and that the claimant had good cause for not having incorporated it into the administrative record. Id. at 595.

Magistrate Judge Scuderi determined that Dr. Kaiser's treatment notes had not been incorporated into the administrative record because they concern treatment received subsequent to the administrative hearing and the ALJ's decision. (R&R at 22.) The Magistrate Judge found, however, that the new evidence is not

material and does not warrant remand because "these records do not shed light on the level of Plaintiff's social functioning during the relevant time period, nor do they support a determination that Plaintiff was unable to work." (R&R at 22-23.)

Dr. Kaiser evaluated Plaintiff on December 18, 2001 and noted a history of social anxiety with an element of being overly dependent. (Pl.'s Mem., App. A at A-15.) His treatment notes from December 27, 2001, reflect the existence of traumatic events that Plaintiff cannot talk about. (Pl.'s Mem., App. A at A-14.) Dr. Kaiser diagnosed Plaintiff with social phobia and a dependent personality disorder and found that his GAF score for the past year would have been 50. (Pl.'s Mem., App. A at A-5, Pl.'s Obj. at 11 n. 3.) Plaintiff argues that these treatment notes are material because they make it clear that his social anxiety was not a new problem but dates back to at least the period of time when he held a job. (Pl.'s Obj. at 10.) He further argues that his statement, made on December 27, 2001, that there were traumatic events he cannot talk about, supports his mother's testimony. He contends that these notes shed "considerable light on the level of Plaintiff's functioning during the relevant time period." (Pl.'s Obj. at 12.) Having reviewed the treatment notes submitted by Plaintiff, the Court concludes that there is nothing in these notes which clearly describes events occurring prior to the ALJ's decision or Plaintiff's behavior or mind set prior to the ALJ's

decision. Accordingly, the Court overrules Plaintiff's objection to the Magistrate Judge's recommendation that Plaintiff's request for remand be denied.

IV. CONCLUSION

For the reasons stated above, the Court overrules Plaintiff's objections and adopts the Magistrate Judge's Report and Recommendation. The Court grants summary judgment in favor of Defendant and denies Plaintiff's motion for summary judgment.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JAMES C. STOCKMAN	:	CIVIL ACTION
	:	
v.	:	
	:	
JO ANNE B. BARNHART,	:	NO. 02-2162
Commissioner of Social	:	
Security	:	

ORDER

AND NOW, this day of August, 2003, upon consideration of the pleadings and record herein, and after review of the Report and Recommendation of United States Magistrate Judge Peter B. Scuderi, **IT IS HEREBY ORDERED** that:

1. Plaintiff's objections to the Report and Recommendation (Docket No. 20) are **OVERRULED**;
2. The Report and Recommendation is **APPROVED** and **ADOPTED** consistent with the accompanying Memorandum;
3. The Plaintiff's Motion for Summary Judgment (Doc. No. 12) is **DENIED**;
4. The Commissioner's Motion for Summary Judgment (Doc. No. 15) is **GRANTED**.

BY THE COURT:

John R. Padova, J.